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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 114 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR BHAGWANJI BHIMAJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 114 of 1992

MR PUSHPDATT J.VYAS for MR.BS PATEL for the appellants.

MR DIGANT P.JOSHI, APP for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 04/10/2001

ORAL JUDGEMENT

By filing this appeal under section 374(2) of the Code of Criminal Procedure, 1973, the appellants have challenged legality of judgment dated January 16, 1992

rendered by the learned Special Judge, Mehsana in Special Case No.5/91, by which the appellants are convicted of the offences punishable under section 506(2) read with section 114 of the Indian Penal Code as well as section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and punished with R.I. for six months.

2. Shri Babaldas Bechardas was the Chairman of Shri Harijan Kelvani Mandal, Visnagar. The said Mandal was running Sayaji Vidyarthi Ashram since 43 years of the filing of complaint. In the precinct of the Ashram, a hostel has been established where students belonging to scheduled castes are provided facilities of lodging and boarding free of charge. To the north of Ashram compound, there are railway staff quarters wherein employees of the railway are residing. The appellant no.1 is a railway servant and is staying with appellant no.2, who is his wife, in one of the staff quarters provided by the railway authorities. The residents of railway staff quarters had made water line for discharge of bathing water in the open land of the Ashram. It is the case of the prosecution that the intention of the railway employees was to grab the land of the Ashram. The inhabitants of the Ashram had constructed a hedge which was removed on November 29, 1990 and when the inhabitants of the Ashram including the complainant had told the railway employees not to do so, the appellants had spoken the words "Dhedao Fati Gaya Chho ane vadhare mathakut karsho to kapi nakhashu'. It is also the case of the prosecution that threats to kill with dharia were administered by the appellants. Therefore, Shri Babaldas Bechardas, who was Chairman of Shri Harijan Kelvani Mandal, Visnagar had lodged a written complaint with the Police Inspector, Visnagar Police Station, Visnagar on November 29, 1990 and requested the Police Inspector to take appropriate action against the appellants, as according to him, the appellants had committed offences punishable under sections 504, 506(2) read with section 114 of the Indian Penal Code as well as offence punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the Atrocities Act" for short). On receipt of written complaint, necessary entries were made in the register maintained at the police station and panchnama of place of occurrence was prepared in presence of independent witnesses. The investigating officer had recorded statements of those persons who were found conversant with the facts of the case. On completion of investigation, the appellants were chargesheeted in the Court of learned Special Judge, Mehsana of the offences

punishable under sections 504, 506(2) read with section 114 of the Indian Penal Code and section 3(1)(x) of the Atrocities Act.

3. The charge at Exh.7 was framed against the appellants of the offences punishable under sections 504, 506(2) read with section 114 of the Indian Penal Code and section 3(1)(x) of the Atrocities Act. The charge was read over and explained to the appellants, who pleaded not guilty to the same and claimed to be tried. Before recording of the evidence started, parties to the case submitted a compromise purshis at Exh.17. In the said purshis it was stated that in the incident which had taken place on November 29, 1990 it was never the intention of the accused to grab land belonging to Shri Sayaji Vidyarthi Ashram. In the said purshis it was assured that the accused would not create any encroachment on the land belonging to the Ashram and in order to see that peace is maintained between the parties, the parties have compromised the matter. By filing the purshis, the parties to the case had declared before the Court that the matter was compromised between them. The compromise purshis was signed by the appellants as well as by the original complainant i.e. Shri Babaldas Bechardar, who was Chairman of Shri Harijan Kelvani Mandal, Visnagar. The learned Special Judge passed following order on the compromise purshis on December 27, 1991 :

"The parties are present. The compromise is read over and explained to them. They admit it. Hence, it is recorded. The same be accepted for the offences under sections 504 & 114 I.P.C. under section 320(1)(8) of the Criminal Procedure Code.

Date: 27.12.91 Sd/- P.J.Dholakia,
S.J."

Thereafter the prosecution examined; (1) Babaldas Bechardas,PW 1 Exh.15, (2) Shaileshkumar Shankerlal,PW.2 Exh.18, (3) Amrutbhai Mafabhai, PW.3 Exh.19, (4) Laljibhai Shambhubhai, PW.4,Exh.20, and (5) Kishorsing Motising Vaghela, PW.5,Exh.21, to prove its case against the appellants. The prosecution also produced documentary evidence, such as panchnama of place of occurrence prepared in presence of independent witnesses, the complaint lodged by complainant Babaldas Bechardas etc. in support of its case against the appellants.

4. After recording of evidence of prosecution witnesses was over, the learned Special Judge explained

to the appellants the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statement as required by section 313 of the Code of Criminal Procedure, 1973. In their further statements, the appellants denied the case of prosecution, but did not examine any witness in support of their defence.

5. On appreciation of evidence led by the prosecution, the learned Judge has concluded that it is established by the prosecution that the appellants had committed offence punishable under section 506(2) read with section 114 I.P.C. as well as section 3(1)(x) of the Atrocities Act and has imposed sentence which is referred to earlier, by judgment dated January 16, 1992, giving rise to the present appeal.

6. Mr. Pushpdatt J. Vyas, learned counsel for the appellants submitted that in view of the contents of compromise purshis Exh.17, the learned Judge was not justified in convicting the appellants of the offence punishable under section 506(2) read with section 114 I.P.C. and, therefore, conviction of the appellants of the said offence deserves to be set aside. The learned counsel further submitted that the evidence led by the prosecution does not establish beyond reasonable doubt that the appellants had intentionally insulted the complainant with intent to humiliate him in any place within public view and, therefore, conviction of the appellants of the offence punishable under section 3(1)(x) of the Atrocities Act also deserves to be set aside. The learned counsel pleaded that the learned Special Judge has misread the evidence on record and, therefore, the appeal should be accepted.

7. Mr. Digant P. Joshi, learned A.P.P. submitted that the prosecution evidence and more particularly, the evidence of complainant Babaldas Bechardas establishes beyond pale of doubt that the appellants had intentionally insulted as well as intimidated with intent to humiliate the complainant, who is a member of scheduled caste near the place of Ashram within public view and, therefore, the just conviction of the appellants recorded by the learned Special Judge should be upheld by this Court.

8. I have heard the learned counsel for the parties and re-appreciated the whole evidence on record. A bare reading of compromise purshis Exh.17 submitted by the parties makes it evident that the parties had compromised the whole matter and not part of the matter at all.

Under the circumstances, I am of the view that the learned Judge was not justified in accepting the compromise only with regard to offence punishable under section 504 r.w.section 114 I.P.c. Section 320(1) of the Code of Criminal Procedure, 1973 , inter-alia, provides that the offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table. A bare reading of the Table makes it evident that offences punishable under sections 504 & 506 I.P.C. are compoundable by the person who is insulted or who is intimidated. Therefore, the complainant in this case i.e. Babaldas Bechardas had all right to compound the offences punishable under sections 504 & 506 of I.P.C. Under the circumstances, having regard to the contents of the compromise purshis, compounding of offences could not have been restricted to offence punishable under section 504 r.w.section 114 I.P.C. and the learned Judge should have acquitted the appellants of the offence punishable under section 506 I.P.C., as the same was compounded by the original complainant. Thus, conviction of the appellants of the offence punishable under section 506(2) read with section 114 I.P.C. is liable to be set aside. Section 3(1)(x) of the Atrocities Act, inter-alia, provides as under :-

"Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine."

From the contents of the compromise purshis, it is reasonable to infer that the complaint was filed because an attempt was made by the appellants to encroach and grab the land belonging to the Ashram. The evidence of Shaileshkumar Shankerlal, PW.2 Exh.18 clearly establishes that the words which were alleged to have been spoken by the appellants were not uttered by them with intent to insult the complainant. Further the evidence of witness Amratbhai Mafabhai, PW.3 Exh.19 makes it evident that it is not clear as to which of the appellants had uttered the words with intent to insult complainant Babaldas Bechardas. As observed earlier, the appellants are entitled to be acquitted of the offence punishable under section 506(2) read with section 114

I.P.C. and therefore, ingredients of intimidation contained in section 3(1)(x) of the Atrocities Act do not stand established by the prosecution at all. The evidence on record does not satisfactorily establish that the appellants had intentionally insulted the complainant to humiliate him knowing that he was a member of scheduled caste and that such insult had taken place within public view. Thus, I am of the opinion that conviction of the appellants of the offence punishable under section 3(1)(x) of the Atrocities Act, 1989 is also liable to be set aside.

For the foregoing reasons, the appeal succeeds. The judgment and order dated January 16, 1992 convicting the appellants of the offences punishable under section 506(2) read with section 114 of the Indian Penal Code and section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside. The punishment imposed on the appellants by the said judgment is also set aside and the appellants stand acquitted.

(J.M.Panchal, J.)